Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements	**IB Docket No. 98-148**
Regulation of International Accounting Rates	**CC Docket No. 90-337**

REPLY COMMENTS OF TELEFÓNICA INTERNACIONAL, S.A.

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, Telefónica Internacional, S.A. ("TISA") hereby submits these comments in reply to the comments submitted in response to the Notice of Proposed Rulemaking ("NPRM") issued in the above-captioned proceeding.[1]

I. THE COMMISSION SHOULD PERMIT ALTERNATIVE SETTLEMENT ARRANGEMENTS WHERE THERE IS COMPETITION

In its initial comments, TISA strongly supported the Commission's proposal to eliminate the ISP for settlement arrangements with foreign carriers that lack market power. TISA further proposed, however, that once a non-dominant foreign carrier has entered into a settlement arrangement with a U.S. carrier pursuant to this

[1] See In the Matter of 1998 Biennial Regulatory review – Reform of the International Settlements Policy and Associated Filing Requirements; Regulation of International Accounting Rates, IB Docket No. 98-148 and CC Docket No. 90-337, *Notice of Proposed Rulemaking* (August 6, 1998) ("NPRM").

exception, other carriers in that market should be permitted to do so without regard to their market power in adjacent markets. The rationale for this proposal is simple: the ability of a non-dominant carrier to enter into a settlement arrangement with a U.S. carrier demonstrates that there are viable alternative means of terminating traffic in that market. A carrier that is dominant in an adjacent market (*e.g.*, local exchange services) could not thereafter whipsaw a U.S. carrier in international settlement negotiations, because the U.S. carrier could always turn to the alternative carrier (or carriers, as the case may be). Indeed, the very fact that a non-dominant carrier has entered into a settlement arrangement with a U.S. carrier is likely to strengthen the non-dominant carrier's competitive position vis-à-vis other carriers in that market, thereby improving its ability to terminate traffic on behalf of other U.S. carriers.

Numerous commenters agreed that the ISP serves no purpose – and in fact only serves to sap competitive pressures for lower settlement rates – whenever a U.S. carrier can choose between multiple foreign carriers in a particular market. As the Competitive Telecommunications Association observed, "the ISP should never be applied where whipsawing is not a realistic concern," in light of the regulatory constraints that the ISP imposes on the negotiation of competitive settlement arrangements.[2]

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[2] See Comments of the Competitive Telecommunications Association at 7, 3; see also Comments of Qwest at 2-3 ("Competition is the best way to prevent whipsawing because wherever U.S. carriers can choose between multiple foreign carriers, no single carrier has the leverage needed to whipsaw."); Comments of Deutsch Telekom AG and Deutsch Telekom, Inc. at 4 (ISP should not be applied where dominant carriers face competition, because there is no risk of whipsawing).

The counterproductive effects of the ISP are amply demonstrated by the case of a non-dominant carrier that enters into a settlement arrangement with a U.S. carrier pursuant to the proposed exception. If a carrier that is dominant in an adjacent market remained subject to the constraints of the ISP, its ability to compete with the non-dominant carrier in international markets would be seriously impeded. More importantly, a U.S. carrier would have a significant *disincentive* to negotiate with the dominant carrier, because it would know that whatever rate it negotiated would be available to its competitors – a disincentive that the Commission recognized in the NPRM.[3] The overall result would be to reduce competition in that market for lower settlement rates.

Indeed, the continued imposition of the ISP on the dominant carrier under these circumstances could even facilitate a duopoly arrangement. The non-dominant carrier, knowing that the dominant carrier could not readily respond with similarly competitive settlement arrangements, would have an incentive to peg its own settlement rates at, or slightly below, the rate charged by the dominant carrier. By contrast, if the non-dominant carrier knew that the dominant carrier would be "freed" from the ISP once the non-dominant carrier had negotiated a settlement arrangement with a U.S. carrier, it would have a significantly greater incentive to offer a competitive rate.

For these reasons, TISA reiterates its proposal that, once a non-dominant foreign carrier has entered into a settlement arrangement with a U.S. carrier pursuant to

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[3] As the Commission observed, "no matter how aggressively [the U.S. carrier] negotiates, it will be unable to achieve a cost advantage vis-a-vis its competitors. Further, the carriers that are able to obtain the same rates negotiated by the other carrier have a reduced incentive even to enter into negotiations." NPRM at ¶ 9.

the proposed exception, other carriers in that market should be permitted to do so without regard to their market power in adjacent markets.

II. CARRIERS SETTLING AT THE BENCHMARK RATES SHOULD BE PERMITTED TO COMPETE THROUGH ALTERNATIVE ARRANGEMENTS

The NRPM proposed to lift the ISP with regard to certain liberalized markets, including those routes on which it has already authorized International Simple Resale ("ISR"). Under the Commission's ISR rules, U.S. carriers may serve routes via ISR where the destination country is found by the Commission to offer equivalent resale opportunities, or where 50 percent of the traffic is settled at or below the benchmark rate. TISA further proposed that, as an additional incentive to competition, the Commission should permit any individual foreign carrier that offers to settle at or below the benchmark rate with all U.S. carriers to enter into alternative settlement arrangements, without regard to whether the destination market meets the ISR requirements. TISA observed that this proposal would offer a significant incentive for a foreign carrier (and subsequently its competitors) to settle at or below the benchmark rate, and would pose little competitive risk because the foreign carrier would have already agreed to settle with U.S. carriers at or below the benchmark rate.

TISA's proposal finds support among the numerous commenters who support the use of benchmark rates, rather than the "best practices" rate, as the basis for determining when to lift the ISP with regard to a particular market. One of the Commission's proposed approaches was to lift the ISP where 50 percent of the traffic on a particular route is settled at or below the current best practices rate of $.08. TISA opposed this proposal on the grounds that the Commission's benchmark rates are

already set at a level that protects U.S. consumers, and because the "best practices" rate would be an overly-restrictive basis upon which to liberalize international services to WTO member countries. SBC Communications made a similar point, observing that "in authorizing ISR where 50 percent or more of the traffic on a route is settled at or below benchmark rates, the Commission has gone to great lengths to say that this condition ensures the availability of reasonably low-cost alternatives for U.S. carriers to terminate traffic in the particular foreign country."[4] Cable & Wireless shared TISA's concern that reliance on the best practices rate "assumes, incorrectly, that termination costs are the same in all countries," and further observed that foreign carriers do not always control the charges that make up their termination costs.[5]

Significantly, the principal proponents of using the best practices rate – AT&T and Sprint – also have the greatest interest in preserving the status quo.[6] As these companies are no doubt aware, so few foreign carriers could settle at the best practices rate – which is, after all, based on the current rates in a *single* country – that virtually no market would benefit from ISP liberalization under this approach. The result would be that smaller, more competitive U.S. carriers would continue to be unable to negotiate alternative settlement arrangements with foreign carriers – arrangements that would permit them to undercut the prices of the major U.S. carriers. For all of their

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[4] Comments of SBC Communications, Inc. at 9, citing International Settlement Rates, IB Docket No. 96-261, *Report and Order*, 12 FCC Rcd. 19806 at ¶ 244 (1997).

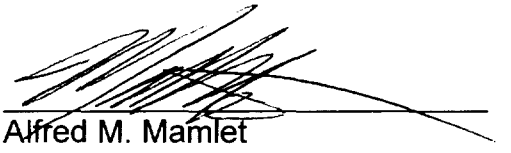
[5] See Comments of Cable and Wireless USA, Inc. at 6; see also Comments of BellSouth Corporation at 3 (use of best practices rate is "too strict and will hinder the Commission's otherwise progressive policy reforms.").

[6] See Comments of AT&T Corp. at 3-4; Comments of Sprint Corporation at 7-8.

professed concern about demanding lower settlement rates from foreign carriers, the major U.S. carriers are plainly aware of this result.

Rather than adopt a standard that will merely preserve the status quo, the Commission should use the benchmark rates as the basis for ISP liberalization. Unlike the best practices rate, the benchmark rates actually have a significant prospect of increasing competition in international settlement arrangements and, moreover, are set at a level that protects the interests of U.S. consumers. In order to enhance competition further, the Commission should also conclude that if a foreign carrier agrees to settle with all U.S. carriers at or below the applicable benchmark rate, it should be permitted to enter into alternative settlement arrangements without regard to whether that market satisfies the Commission's requirements for ISR. As noted above, this proposal would create significant incentives for foreign carriers to settle at the benchmark rate, while at the same time opening the door for even greater downward pressure on settlement rates.

Respectfully submitted,



Alfred M. Mamlet
Matthew S. Yeo
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
Tel. (202) 429-3000

Attorneys for Telefónica Internacional, S.A.

October 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of October, 1998, served a copy of the foregoing Reply Comments of Telefónica Internacional, S.A., by first-class mail, postage prepaid, upon the following:

Peter A. Rohrbach
Hogan & Hartson L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004

Leon M. Kestenbaum
Sprint Corporation
1850 M. Street, N.W.
Washington, D.C. 20036

Genevieve Morelli
Executive Vice President
And General Counsel
Competitive Telecommunications
Association
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Robert J. Aamoth
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Mark C. Rosenblum
AT&T Corporation
295 N. Maple Avenue
Room 3252H3
Basking Ridge, NJ 07920

Sanford C. Reback
MCI Worldcom, Inc.
1717 Pennsylvania Avenue, N.W.
Washington, D.C.

Robert S. Koppel
MCI Worldcom, Inc.
15245 Shady Grove Road
Suite 460
Rockville, MD 20850

Stanley J. Moore
SBC Communications Inc.
5850 W. Las Positas Blvd.
Pleasanton, CA 94588

Thomas J. Sugrue
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W.
Washington, D.C. 20005

Carl R. Frank
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Robert M. Lynch
SBC Communications Inc.
175 E. Houston St.
Room 4-D-10
San Antonio, Texas 78205

Rachel J. Rothstein
Vice President for Regulatory and
Government Affairs
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

CERTIFICATE OF SERVICE

William B. Barfield
Bellsouth Corporation
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30309-3610

Gary M. Epstein
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Joseph T. Garrity
Senior Director, Legal, Regultory
and legislative Affairs and
Corporate Secretary
Qwest Communications Corporation
555 17th Street
Denver, CO 80202

Tiki Gaugler
Regulatory Attorney
Qwest Communications Corporation
4250 North Fairfax Drive
Arlington, VA 22203

Aileen A. Pisciotta
Kelley Drye & Warren, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Hans-Willi Hefekauser
Deutsche Telekom AG
Friedrich-Ebert-Allee 140
Bonn
Germany

Dr. Andreas Tegge
Deutsche Telekom, Inc.
1020 19th Street, N.W.
Suite 850
Washington, D.C. 20036

Terrence J. Ferguson
Senior Vice President and General Counsel
Level 3 Communications, Inc.
3555 Farnam Street
Omaha, Nebraska 68131

Mitchell F. Brecher
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W., Suite 600
Washington, D.C. 20036

Eric Fishman
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
11th Floor
Arlington, VA 22209

Brian J. McHugh
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

Cheryl A. Tritt
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

CERTIFICATE OF SERVICE

James E. Graf II
BT North America Inc.
601 Pennsylvania Avenue, N.W.
North Building, Suite 725
Washington, D.C. 20004

Joel S. Winnik
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

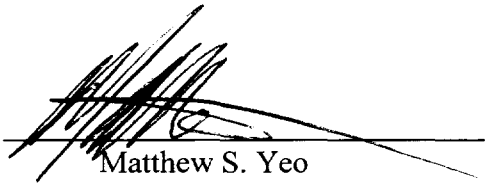
Christopher M. Heimann
Counsel for Ameritech
Suite 1020
1401 H Street, N.W.
Washington, D.C. 20005

Gregory C. Staple
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036-4104

Emily C. Hewitt
General Counsel
General Services Administration
1800 F Street, N.W., Room 4002
Washington, D.C. 20405

Randall B. Lowe
Piper & Marbury L.L.P.
Seventh Floor
1200 Nineteenth Street, N.W.
Washington, D.C. 20036

Charles C. Hunter
Hunter Communications Law Group
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006



Matthew S. Yeo